

BEFORE THE DEPARTMENT OF JUSTICE  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM	)	NOTICE OF PROPOSED
23.12.401, 23.12.402, 23.12.408,	)	AMENDMENT AND REPEAL
23.12.430, 23.12.501, 23.12.502,	)	
23.12.601 and 23.12.605, concerning	)	NO PUBLIC HEARING
fire safety, fireworks, and Uniform Fire	)	CONTEMPLATED
Code; and the repeal of ARM	)	
23.12.420, concerning equipment	)	
approval	)	

TO: All Concerned Persons

1. On July 8, 2013, the Department of Justice proposes to amend and repeal the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on June 18, 2013, to advise us of the nature of the accommodation that you need. Please contact Kathy Stelling, Department of Justice, 215 North Sanders, P.O. Box 201401, Helena, MT 59620-1401; telephone (406) 444-2026; Montana Relay Service 711; fax (406) 444-3549; or e-mail [kstelling@mt.gov](mailto:kstelling@mt.gov).

3. The rules as proposed to be amended are as follows:

23.12.401 DEFINITIONS Unless the context requires otherwise, the following definitions apply to the rules in ARM Title 23, chapter 12:

(1) through (7) remain the same.

(8) "Explosive" means a chemical compound, mixture, or device, the primary or common purpose of which is to function by explosion. The term includes, but is not limited to, dynamite, black powder, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord, igniter cord, igniters, and display fireworks. See Chapter 2, Section 202 - General Definitions 1.3G (Class B, Special), International Fire Code, ~~2009~~ 2012 Edition.

(9) remains the same.

(10) "Fire code" means the edition of the International Code Council, International Fire Code (IFC), ~~2009~~ 2012 Edition, currently adopted by the FPIS, and any additions thereto currently adopted by the FPIS.

(11) through (27) remain the same.

AUTH: 50-3-102, MCA

IMP: 50-3-102, MCA

RATIONALE AND JUSTIFICATION: The department has adopted the

International Fire Code (IFC), which is published every three years. The amendments to this rule are necessary to conform to the current edition of the IFC.

23.12.402 ENFORCEMENT OF FIRE PREVENTION AND INVESTIGATION SECTION RULES (1) and (2) remain the same.

(3) Each official responsible for investigating fires shall file with the state fire marshal a fire incident report on each and every fire occurring within the official's jurisdiction. Fire incident reports must be submitted on forms downloaded, or filled out online, from the National Fire Incident Reporting System (NFIRS) at [www.nfirs.fema.gov](http://www.nfirs.fema.gov). The state fire marshal may notify a fire department of incomplete or invalid reports for resubmission with complete information.

AUTH: 50-3-102(2), MCA

IMP: 50-3-102, 50-61-102, 50-63-203(1), MCA

RATIONALE AND JUSTIFICATION: This amendment is reasonably necessary to clarify that forms can be either downloaded or completed online.

23.12.408 CERTIFICATE OF APPROVAL FOR COMMUNITY HOMES

(1) through (4) remain the same.

(5) For purposes of determining compliance with the fire code, all community homes shall comply with the ~~2009~~ IFC as adopted, and with all other rules promulgated by the FPIS.

(6) and (7) remain the same.

AUTH: 50-3-102, MCA

IMP: 53-20-307, 52-4-204, MCA

RATIONALE AND JUSTIFICATION: The department has adopted the International Fire Code (IFC), which is published every three years. The amendments to this rule are necessary to conform to the current edition of the IFC.

23.12.430 SERVICE TAGS (1) through (5) remain the same.

(6) Stored pressure extinguisher tags must follow the guidelines listed in the National Fire Protection Association (NFPA) 10, ~~2007~~ 2010 Edition, and include the information listed in (3).

(7) remains the same.

AUTH: 50-3-102, MCA

IMP: 50-3-102, MCA

RATIONALE AND JUSTIFICATION: This amendment is reasonably necessary to conform to the 2010 Edition of the NFPA 10, which replaced the 2007 Edition.

23.12.501 RETAIL FIREWORKS SALE (1) through (12) remain the same.

(13) All fireworks stands shall be subject to inspection by the chief, or the

chief's representative, in accordance with the 2009 IFC. Violations shall be handled in accordance with 50-61-115, MCA. If immediate action is necessary to safeguard life and property, the chief may issue an order to remedy in accordance with 50-62-102, MCA.

AUTH: 50-3-102(3), MCA

IMP: 50-3-102(3), MCA

RATIONALE AND JUSTIFICATION: The department has adopted the International Fire Code (IFC), which is published every three years. The amendments to this rule are necessary to conform to the current edition of the IFC.

23.12.502 FIREWORKS REPACKAGING, STORAGE, AND SHIPPING

(1) All buildings where fireworks are stored, opened for repacking, repackaged, or prepared for shipping shall conform to the provisions of the 2009 2012 International Building Code and the 2009 IFC. Where those codes are silent, NFPA pamphlet 1124 (2006 Edition) shall be applied.

(2) remains the same.

AUTH: 50-3-102(3), MCA

IMP: 50-3-102(3), MCA

RATIONALE AND JUSTIFICATION: This amendment is reasonably necessary to update references to the current editions of the codes.

23.12.601 ADOPTION OF THE INTERNATIONAL FIRE CODE (~~2009~~ 2012 EDITION) (1) The FPIS adopts and incorporates by reference the International Fire Code ~~2009 Edition (2009 IFC)~~ 2012 Edition (2012 IFC) with the additions and amendments enumerated in this subchapter. Copies of the ~~2009 IFC~~ and related materials may be obtained from the International Code Council, 4051 West Flossmoor Road, Country Club Hills, IL 60478-5795.

(2) remains the same.

(3) This rule establishes a minimum fire protection code to be used in conjunction with the building code. Nothing in this rule prohibits any local government unit from adopting those portions of the IFC that are not adopted by the FPIS or standards which are more restrictive than the ~~2009 IFC~~.

(4) through (5)(b) remain the same.

(c) The Permit sections of the following chapters are not adopted: 3, 5, 6, 9, 11, ~~and 15-44~~ 20-35, and 50-67.

(d) and (e) remain the same.

(f) 202 General Definitions. ~~GOVERNMENTAL FIRE AGENCIES FIRE DEPARTMENT - Governmental Fire agencies~~. Any fire department organized under Montana law under the jurisdiction of a city, county, state, fire district, or fire service area.

(g) and (h) remain the same.

(i) 405.2 Delete section and replace with: "Frequency. Required emergency evacuation drills shall be held at the intervals specified in 20-1-402, MCA. There

must be at least eight emergency evacuation/disaster drills held a year in a school. At least four of the drills must be fire exit drills. Drills must be held at different hours of the day or evening to avoid distinction between drills and actual disasters." In Table 405.2, delete the word "monthly" from the Frequency column, applicable to Group E, and replace with "20-1-402, MCA."

(i) remains the same, but is renumbered (j).

(j) remains the same, but is renumbered (k).

(k) remains the same, but is renumbered (l).

~~(l) (m) 906.1 Portable fire extinguishers~~ extinguishers - (1) Exception - is not adopted.

~~(m) (n) 1008.1.9.4 Door operations.~~ Adopted adding the sentence "Exit doors shall not be locked, chained, bolted, barred, latched, or otherwise rendered unusable. All locking devices shall be of an approved type."

~~(n) (o) 2206.7.9 2306.7.9 through 2306.7.9.2.4 Vapor-recovery and vapor-processing systems –including all subsections,~~ are not adopted.

~~(o) (p) 2403.2 3103.2 Approval required.~~ Adopted, but deleting "a permit and."

~~(p) (q) 3301.1.3 5601.1.3 Fireworks~~ - is not adopted.

~~(q) (r) 3301.2.2 5601.2.2 through 3301.2.4.2 5601.2.4.2~~ are not adopted.

(s) 5606.5.2.1 Smokeless propellant - is not adopted. The maximum quantities, storage conditions, and fire-protection requirements for gunpowder and ammunition stored in a building shall be as follows: Smokeless powder and small arms primers or percussion caps shall be in accordance with 50-61-120 and 50-61-121, MCA.

~~(r) (t) 3306.5.2.3 5606.5.2.3 Small arms primers~~ - is not adopted. See 50-61-120 and 50-61-121, MCA.

~~(s) 3306.6 The maximum quantities, storage conditions, and fire-protection requirements for gunpowder and ammunition stored in a building shall be as follows: Smokeless powder and small arms primers or percussion caps shall be in accordance with 50-61-120 and 50-61-121, MCA.~~

~~(t) (u) 3308 5608 Fireworks Display~~ - is not adopted. See Title 50, chapter 37, MCA.

~~(u) (v) 3406.1 5706.1 General~~ - In paragraph numbered 1., delete "farms and."

~~(v) (w) 3406.2 5706.2~~ Delete "farms and" from the heading, and "on farms and rural areas and" from the paragraph.

~~(w) (x) 3406.2.5.1(2) 5706.2.5.1(2)~~ is not adopted.

~~(x) Appendix B - Fire Flows~~ - is adopted.

~~(y) Appendix C - Hydrants~~ - is adopted.

~~(z) Appendix D - Access Roads: Sections 101-105.3~~ - is adopted.

~~(aa) Appendix I - Fire Protection Systems Non-Compliant Conditions~~ - is adopted.

(y) Appendix A - Board of Appeals - is not adopted.

(z) Appendix D - Access Roads - sections D105.4 through D108 are not adopted.

(aa) Appendix E - Hazard Categories - is not adopted.

(ab) Appendix F - Hazard Ranking - is not adopted.

- (ac) Appendix G - Cryogenic Fluids - is not adopted.
- (ad) Appendix H - Hazardous Materials - is not adopted.
- (ae) Appendix J - Building Information Sign - is not adopted.

AUTH: 50-3-102, MCA

IMP: 50-3-103, MCA

RATIONALE AND JUSTIFICATION: The department has adopted the International Fire Code (IFC), which is published every three years. The amendments to this rule are necessary to conform to the current edition of the IFC, add Montana-specific rules, and to promote consistency within the rules.

23.12.605 PROCESSES (1) Chapters ~~22, 33, and 34~~ 23, 56, and 57 of the IFC are adopted with the following ~~exceptions~~ additions and amendments:

(a) ~~2204.5~~ 2304.5 Fuel Dispensing in Rural Areas. For public automotive motor vehicle fuel-dispensing stations located in rural areas:

(b) ~~2204.5.1~~ 2304.5.1 General. When performed in the operation of a farm or ranch, or when approved by the chief, liquids used as fuels may be transferred from tank vehicles into the tanks of motor vehicles or special equipment, provided:

1. through 8. remain the same.

(c) ~~2204.5.2~~ 2304.5.2 Motor Vehicle Fuel Dispensing Stations. Motor vehicle fuel dispensing stations are not permitted at bulk plants which are not located in a rural area with the following exceptions:

(i) and (ii) remain the same.

(d) ~~2204.5.3~~ 2304.5.3 Rural Bulk Plants. Bulk plants located inside the districts defined as "rural" are permitted to incorporate motor vehicle fuel-dispensing stations. The motor vehicle fuel-dispensing stations shall be separated by a fence or similar barrier from the area in which bulk operations are conducted.

(e) ~~2204.6~~ 2304.6 Rural Motor Vehicle Fuel-Dispensing Stations.

(f) ~~2204.6.1~~ 2304.6.1 Plans submittal. Plans shall be submitted in accordance with these rules for public automotive motor vehicle fuel-dispensing stations located in rural areas.

(g) ~~2204.6.2~~ 2304.6.2 Plans and specifications submittal. Plans and specifications shall be submitted for review and approval prior to the installation or construction of a public automotive motor vehicle fuel-dispensing station located in a rural area. A site plan shall be submitted which illustrates the location of flammable liquid, LP-gas, or CNG storage vessels, and their spatial relation to each other, property lines, and building openings. Both aboveground and underground storage vessels shall be shown on plans. For each type of station, plans and specifications shall include, but not be limited to, the following:

1. remains the same.

(h) ~~2204.6.3~~ 2304.6.3 Plan Approval. Prior to the proposed renovation or construction of a public automotive motor vehicle fuel-dispensing station located in a rural area, an applicant shall obtain a letter of approval from the local fire official responsible for fire protection. This letter and two sets of plans, blueprints, or drawings shall be submitted to the FPIS for examination and approval.

(i) ~~2204.7~~ 2304.7 Locations of aboveground tanks. Aboveground storage

tanks are not prohibited for private use on farms and ranches. EXCEPTION: Pursuant to 50-3-103(6), MCA, there are no requirements regarding diked areas or heat-actuated or other shut-off devices for storage tanks containing Class I or Class II liquids.

(j) ~~2204.7.1~~ 2304.7.1 Disposal of Tanks. Tanks shall be disposed of in accordance with the following:

1. through 3. remain the same.

(k) ~~2206.2.1.1~~ 2306.2.1.1 Inventory Control is amended by adding the following exceptions to the existing section: EXCEPTION: Other leak detection methods as approved by the Montana Department of Environmental Quality UST program are acceptable; and Unsupervised Dispensing requires a sign to provide an "EMERGENCY" telephone number.

~~(l) 3306.6 Hazardous Materials. The maximum quantities, storage conditions, and fire protection requirements for gunpowder and ammunition stored in a building shall be as follows:~~

~~1. Smokeless powder shall be stored in accordance with 50-61-120 and 50-61-121, MCA.~~

~~2. Small arms primers or percussion caps shall be stored in accordance with 50-61-120 and 50-61-121, MCA.~~

AUTH: 50-3-102, MCA

IMP: 50-3-102, 50-3-103, MCA

RATIONALE AND JUSTIFICATION: The department has adopted the International Fire Code (IFC), which is published every three years. The amendments to this rule are necessary to conform to the current edition of the IFC, add Montana-specific rules, and to promote consistency within the rules.

4. The department proposes to repeal the following rule:

23.12.420 APPROVAL OF EQUIPMENT, found at page 23-431 of the Administrative Rules of Montana.

AUTH: 50-3-102, MCA

IMP: 50-3-102, MCA

RATIONALE AND JUSTIFICATION: This repeal is reasonably necessary to reflect the nature of the department's duties. The department is no longer in charge of inspecting and licensing fire extinguishers. The Department of Labor now handles these duties. Thus, the department has no need for this rule.

5. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Matt Cochenour, Department of Justice, 215 North Sanders, P.O. Box 201401, Helena, MT 59620-1401; telephone (406) 444-2026; Montana Relay Service 711; fax (406) 444-3549; or e-mail mcochenour2@mt.gov, and must be received no later than 5:00 p.m. on July 5, 2013.

6. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Matt Cochenour at the above address no later than July 5, 2013.

7. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. The number of persons affected is at least 25.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 5 above, or may be made by completing a request form at any rules hearing held by the department. A copy of the interested persons request form may be printed from the Department of Justice's web site at <http://doj.mt.gov/agooffice/administrative-rules>, and mailed to the rule reviewer.

9. An electronic copy of this notice is available through the Department of Justice web site at <http://doj.mt.gov/agooffice/administrative-rules>. The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that a person's difficulties in sending an e-mail do not excuse late submission of comments.

10. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

By: /s/ Tim Fox  
Tim Fox  
Attorney General  
Department of Justice

/s/ Matt Cochenour  
Matt Cochenour  
Rule Reviewer

Certified to the Secretary of State May 28, 2013.